



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MRA/174244

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 10, 2016, under Wis. Stat., §49.45(5), to review a decision by Milwaukee Enrollment Services in regard to Medical Assistance (MA), a hearing was held on June 14, 2016, at Milwaukee, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether petitioner's wife's spousal income allowance can be increased.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Milwaukee Enrollment Services  
1220 W. Vliet Street  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a nursing home resident of Milwaukee County.
2. An application for MA was filed on petitioner's behalf on March 28, 2016. Petitioner was found to be eligible for nursing home MA effective March 1, 2016.
3. Petitioner's monthly income is \$6,327.80 per month.

4. Petitioner's wife [REDACTED] receives \$619 per month social security. Her community spouse income allowance was set at \$2,980.50, so part of petitioner's income was allocated to her. The result was a monthly cost of care of \$3,921.30 beginning March 1, 2016.
5. [REDACTED]'s necessary monthly expenses total \$3,930 per month. The monthly mortgage is \$851, there are \$300 per month in taxes on petitioner's income, and there are property taxes, home maintenance, and auto expenses.

### **DISCUSSION**

Wis. Stat., §49.455 is the Wisconsin codification of 42 U.S.C. s.13964-5 (MCCA). Among other things, the "spousal impoverishment" provisions at sec. 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. That allowance set by the county, based upon petitioner's housing costs, is \$2,980.50. See MA Handbook, Appendix 18.6.2. The institutionalized person may divert some of his income to his community spouse rather than contributing to his cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allocation determined by the county. Any income of the institutionalized spouse that is not allocated to the community spouse or the personal needs allowance must be paid to the nursing home as the person's cost of care share.

An administrative law judge (ALJ) can grant an exception to this limit on income diversion. The ALJ may increase the income allowance following a fair hearing. The ALJ does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. The relevant statutory provision states that the test for exception is as follows:

(c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4)(b).

Wis. Stat., §49.455(8)(c), emphasis added. Thus an ALJ may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs.

The standard for raising the income allowance is whether, due to exceptional circumstances that could result in financial duress, petitioner's wife needs additional income on top of the \$2,980.50 already allowed to her. Thus my job is not just to look at her expenses, but expenses that might cause financial duress due to exceptional circumstances.

I have reviewed [REDACTED]'s list of expenses and find them to be reasonable. [REDACTED] listed \$3,656 as her monthly expenses, but I added some \$300 for taxes deducted from petitioner's pension check as those taxes are essentially a household expense that are not counted in the MA cost of care determination. I then reduced the amount somewhat because [REDACTED] reported that the monthly phone/internet/TV expense was less.

### **CONCLUSIONS OF LAW**

Petitioner's wife's monthly expenses to avoid financial duress total \$3,930.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to increase the monthly income allocation of petitioner's wife to \$3,930, retroactive to March 1, 2016, and to change the monthly patient liability accordingly. The agency shall take the action within 10 days of this decision.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 20th day of June, 2016

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 20, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability